IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1703 of 2004

Between:

1 Tummala Satish S/o Sudhakara Rao R/o Kodali, Krishna District
2 Donepudi Usha Rani W/o Nageswara Rao R/o Vijayawada, Krishna District
3 Kolli Sarada Devi W/o Durga Prasad R/o Tirupathi, Chittoor District
4 Makkapati Chennakesavulu S/oVeeraiah Chowdary R/oGannavaram, Krishna District
5 Nidamanuri Sudhakar S/o Sambasivarao R/o Chandalavada, Via Tenali, Guntur District
6 Vemuri Basaveswara Rao S/o subramanyam R/o Nidumolu, Krishna District

Petitioners 1 to 6 rep. by G.P. A. Holder Sri. P.V. D. Nageswara Rao S/o Kasi Viswanadha Sastry, 48 year R/o Ameerpet, Hyderabad

..... PETITIONER(S)

AND

1 Authorized Officer, State Bank of Hyderabad, Regional Office, Patamatalanka,
Vijayawada-14
2 State Bank of Hyderabad, rep by Branch Manager, Patamatalanka, Vijayawada-14
3 Union of India, rep by Secretary, Ministry of Finance (Banking Division) Jeevandeep Buildings, Sansad Marg, New Delhi
4 M/s. Eastern Granites Limited, 59 A-11-2, K.P. Nagar, Vijayawada, Krishna District

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the provisions of Sec. 13 (2) and 13(12) of the Securitisation and reconstruction of Financial Assets and Enforcement of

Security interest Act, 2002 as unconstitutional and violative of Article 14of the Constitution of India and consequently declare the possession Notice dt.5-1-2004 as arbitrary and illegal.

Counsel for the Petitioners :MR.P.PRABHAKAR RAO, Advocate

Counsel for the Respondent Nos.1 and 2: MR. K.INDRASENA REDDY, SC FOR SBH

Counsel for the Respondent No.3 : MR A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent No.4 : None appeared.

The Court Made the Following :

ORAL ORDER: (per Hon'ble The Chief Justice)

In view of the decision rendered by the Hon'ble Supreme Court in Transfer Case (Civil) No.92-95 of 2002, dated 8th April, 2004 [MARDIA CHEMICALS LTD v UNION OF INDIA & ORS] upholding the constitutional validity of the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 barring sub-section (2) of Section 17 of the Act, which was declared as ultra vires of Article 14 of the Constitution of India, there is no ground to entertain and decide this petition. The Supreme Court in MARDIA CHEMICALS case has held that before taking action by the Bank under the provisions of the Act, a notice of 60 days is required to be given by the bank and after the measures under Section 13 (2) of the Act have been taken, mechanism has been provided under Section 17 of the Act to approach Debts Recovery Tribunal. Supreme Court has further held thus:

> "1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceedings to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or

places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

In view of the decision of the Supreme Court upholding constitutional validity of the offending provisions of the Act, we dismiss the writ petition thereby reserving liberty to the petitioner to work out its remedies as provided under the Act including filing of appeal under Section 17 of the Act within the period of limitation prescribed therefor, to be counted from today.

DEVINDER GUPTA, CJ

G.ROHINI, J

21st June, 2004.

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To

1 Authorized Officer, State Bank of Hyderabad, Regional Office, Patamatalanka,
Vijayawada-14
2 The Branch Manager, State Bank of Hyderabad, Patamatalanka,
Vijayawada-14
3 The Secretary, Ministry of Finance (Banking Division), Union of India,
Jeevandeep Buildings, Sansad Marg, New Delhi.
4 M/s. Eastern Granites Limited, 59 A-11-2, K.P. Nagar, Vijayawada,
Krishna District.
5 Two CD copies.